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JOSEPH F. SPANIOL, JR
CLERK

No. 88-1686

In The

Supreme Court of the United States

October Term, 1988

THE COLORADO DEPARTMENT OF SOCIAL SERVICES,

Petitioner,

v.

KIMBERLY A. OBERT,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

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Petitioner, by and through counsel of record and pursuant to Sup. Ct. R. 22.5, respectfully submits this reply to those new issues raised in respondent's Brief in Opposition to the Petition for Writ of Certiorari to the Colorado Supreme Court.

In her brief in opposition to the petition for a writ of certiorari, the respondent argues that 42 U.S.C. § 602(a)(22) (1986) requires the states to specify statewide policies for the prompt correction of any underpayment and, therefore, the decision of the Colorado Supreme Court in *Obert v. Colorado Department of Social Services*, 766

P.2d 1186 (Colo. 1988) is correct. Respondent continues to misunderstand the position of the petitioner in this case.

Petitioner has a statutory obligation to correct underpayments. However, there is no federal or state statutory provision requiring petitioner to grant untimely requests for hearings on *alleged* underpayments. In other words, it is the petitioner's position that it is not required to grant a hearing to applicants or recipients of Aid to Families with Dependent Children (AFDC) benefits after the time periods established by state and federal regulations for requesting such a hearing have elapsed.

Respondent has not been able to cite any statutes or any cases to support her position. Although the cases cited by respondent in her brief in opposition have uniformly held that *any* underpayment must be corrected, none of the cases have addressed the issue of whether an administrative hearing must be granted where there is an untimely *claim* that an underpayment exists. It is a far reaching leap of logic to assert that, because an underpayment must be corrected where one is found, a claim of an underpayment must be set for administrative hearing, upon request, for an unlimited period of time.

Respondent's arguments that there are independent, adequate state law grounds to support the judgment of the Colorado Supreme Court and that only factual findings are involved in this case are without merit. A review of the Colorado Supreme Court's decision makes it perfectly clear that the grounds for its decision were based on what it perceived to be federal statutory requirements. Additionally, a review of the decision clearly shows

notice or lack thereof played no role in the decision. (*See* Petition for Writ, App. pp. 30-32.)

CONCLUSION

Petitioner submits that its petition does raise an important question of law which could impact all jurisdictions with AFDC programs. The petitioner respectfully requests that its petition be granted.

For The Colorado Attorney General

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